IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

Writ Petition No.19073 of 1993

And

Contempt Case No.749 of 1999

Writ Petition No. 19073 of 1993

Between:

B.Jijiya Bai S/o.N.Kesuvulu
SP Mahila Visva Vidyalayam College R/o.Tirupathi,Chittoor District.

... PETITIONER

AND

1 Sri Padmavathi Mahila Visva Vidyalayam Rep.by its Registrar
Tirupathi Chittoor Dist.
2 Smt.N.R Vasantha Kumari W/o.N.Danial
R/o.Tirupathi Chittoor Dist.
3 Smt.B.Bhagyalakshmi
Tirupathi Chittoor Dist
(R3 is impleaded as per court order dt.11/2/2003 in WPMP.No.21928/2001)

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, particularly one in the nature of Writ of Certiorari, calling for the records relating to the proceedings in Roc.No.SPMVV/Estt(NT)/747(C)/93 dated 4-11-1993 as well as memo

Roc.No.723/Estt/C/93, dt.10-1-1994 issued by the 1st respondent and after perusing the same declare the same as arbitrary, illegal and invalid in so far as the promotion of the second respondent, namely Smt.N.R.Vasantha Kumari, is concerned and also to hold that the petitioner is senior to the said Smt.N.R.Vasantha Kumari in the cadre of Junior Assistant and consequently direct the first respondent to fix the petitioner's seniority above the second respondent in the cadre of Junior Assistant and promote the petitioner to the post of Superintendent with all consequential benefits and pass any other order or orders as this Court deems fit and proper.

Counsel for the Petitioner: Mr.V.Jagapathi

Counsel for respondent No.1: Mr.P. Gangaiah Naidu

Counsel for respondent No.2: None

Counsel for respondent No.3: Mr.K.G.K. Murthy

Contempt Case No. 749 of 1999

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating/disobeying the Order of the High Court dated 22-11-1994 in WPMP No.23719 WP No. 19073 of 1993)

Between:

B. Jijiya Bai w/o.Kesavulu

... PETITIONER

AND

Prof. Noble Das,

Registrar,

Sri Padmavathi Mahila Visva Vidyalayam, Tirupathi.

...RESPONDENT

Counsel for the Petitioner: Mr.V.Jagapathi

Counsel for the Respondent: Mr.P.Gangaiah Naidu

The Court made the following:

Order:

Writ Petition No.19073 of 1993

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1. This is a matter pertaining to the dispute regarding the seniority of non-teaching staff of Sri Padmavathi Mahila Visvavidyalayam, Tirupathi. The petitioner is claiming seniority over respondents 2 and 3. She was appointed as an Assistant in a non-existing vacancy of the first respondent—University through the proceedings dated 23-11-1983. Respondents 2 and 3 were also appointed as Assistants in the non-existing vacancies. The first respondent through its proceedings dated 17-10-1985 terminated the services of all the Assistants who were appointed in the non-existing vacancies. In the termination order the petitioner's name figured at S.No.6 whereas the names of respondents 2 and 3 figured at S.Nos.1 and 5. On 18-10-1985 the first respondent issued proceedings appointing the petitioner, respondents 2 and 3 and eight (08) others as Junior Assistants in the substantive vacancies. As per the appointment proceedings, the name of the petitioner figured at S.No.5 and the names of respondents 2 and 3 figured at S.Nos.1 and 3 respectively. All of them were kept under probation for a period of two years within a continuous period of three years from the date of their reporting to duty. In the said proceedings, the following has been mentioned regarding seniority:

> The seniority of the above incumbents is arranged as per roster and will be as per the order indicated above.

2. In pursuance of the proceedings dated 18-10-1985, the petitioner joined duty on 19-10-1985. The probation of the petitioner was declared w.e.f. 15-1-1988. The second respondent joined duty as Junior Assistant on 24-10-1985 and her probation was declared w.e.f. 9-2-1988. The petitioner claims that she is a post-graduate in Commerce, diploma holder in Industrial Relations and Personal Management, Higher Grade in English and Telugu Typewriting thereby possessed higher qualifications than the second respondent. The petitioner further contends that the second respondent is younger to her, therefore, she requested the first

respondent to fix her seniority in the cadre of Junior Assistant above the second respondent.

3. The grievance of the petitioner is that the first respondent without considering her representation for fixation of seniority and without preparing a seniority of Junior Assistants issued orders on 19-3-1988 permitting her juniors, including the second respondent to the post of Senior Assistant. The first respondent resorted to promote the candidates according to the rankings shown in the appointment order dated 18-10-1985. The ranking of the candidates in the said proceedings was given according to the whims and fancies of the then Registrar of the first respondent—University and without any basis, therefore, the rankings shown in the appointment orders dated 18-10-1985 by any stretch of imagination cannot be considered as seniority of Junior Assistants. The further grievance of the petitioner is that when there were five vacancies of Junior Assistants in the year 1988, four candidates were promoted without finalizing the seniority and the fifth candidate was brought from S.V. University on deputation to deny the opportunity to the petitioner for promotion. She consistently made the representations on 19-3-1988, 7-8-1993 and 12-11-1993. The petitioner also contended that the first respondent for the first time on 26-10-1993 circulated the seniority list of non-teaching employees to all the individuals calling for objections on or before 15-11-1993. She was supplied a copy of the Circular on 3-11-1993 and even before the expiry of the date for filing of objections, the first respondent resorted to issue the proceedings dated 4-11-1993 promoting the second respondent, who is junior to the petitioner, to the post of Superintendent. She submitted a representation on 12-11-1993 to the first respondent by way of objections to fix up her seniority above the second respondent, but the first respondent did not pass any orders on it. The action of the first respondent in promoting the second respondent in undue haste before the last date for filing the objections is wholly unjustified and illegal. Therefore, the petitioner approached this Court through this writ petition

seeking to hold that the action of the first respondent in promoting the second respondent who is junior to her without waiting for the objections of the affected candidates, including the petitioner, is unsustainable.

4. The first respondent resisted the writ petition contending that the petitioner was appointed as an Assistant w.e.f. 25-11-1983 whereas the second respondent was taken as an Assistant w.e.f. 1-7-1983 i.e., five months earlier to the petitioner in the non-existing vacancies. Subsequently, the State Government sanctioned teaching and non-teaching posts to the first respondent University in the year 1985. At that time, the University regularized the services of 15 Assistants/Typists and appointed them in the regular scale of pay as Junior Assistants and Typists by taking into consideration the educational qualifications, the communal roster and the date of joining at the beginning on consolidated pay vide proceedings dated 18-10-1985. While arranging the order of merit of 11 Junior Assistants in the proceedings dated 18-10-1985, all the points were taken into account i.e., the date of joining as Assistant on consolidated salary and communal roster as fixed by the Government. Thus, the second respondent was placed at S.No.1. Since she was in the University w.e.f. 1-7-1983 and the petitioner was kept at S.No.5 as she was in the University service from 25-11-1983. The petitioner accepted the proceedings and reported to duty on 19-10-1985 without raising any objection at that time. The second respondent reported to duty on 24-10-1985 i.e., before the date of stipulation, which was fixed as 4-11-1985. The petitioner as well as the second respondent completed the period of probation successfully and the probation was declared on 15-1-1988 and 9-2-1988 respectively basing on the dates of joining. The promotion of Junior Assistants to Senior Assistants was done according to the seniority arranged in the proceedings dated 18-10-1985 and in the said list the name of the petitioner did not figure, since she was at S.No.5 in the seniority list of the Junior Assistants. The promotion from Senior Assistant to the cadre of Superintendent was done according to the seniority of the candidates in the cadres of Junior Assistants and Senior Assistants and also as per the recommendations of the Sub-Committee

appointed by the Board of Management and no injustice is done to the petitioner. Since the seniority of the Senior Assistants was already in conformity with the existing service rules, the Board of Management promoted the first five Senior Assistants to the cadre of Superintendent. The minimum educational qualification prescribed for the post, order of merit in the selection and roster were taken into consideration while fixing the seniority. Therefore, basing on the post-graduate qualification and age, the petitioner cannot get seniority overruling the seniority of the second respondent. The seniority was fixed as per Rule 24 (b) of the General and Subordinate Service Rules of the University only, therefore, the petitioner cannot claim seniority over the second respondent. The first respondent for the above reasons requested this Court to dismiss the writ petition.

5. The third respondent in his counter-affidavit reiterated the facts and the sequence of events as narrated by the first respondent and mentioned that she joined in the post of Junior Assistant on 19-10-1985. Her probation was declared w.e.f. 30-11-1987. She was promoted as a Senior Assistant through the proceedings dated 19-3-1988 whereas the petitioner got promotion as Senior Assistant on 23-8-1988. She was promoted as an incharge Superintendent on 7-8-1994 and the said promotion was given to her as per seniority. She got temporary promotion as a Superintendent on 11-7-1997 and got regular promotion on 2-3-2000. The third respondent therefore contends that looking from any angle she became senior to the petitioner in the cadre of Junior Assistant, Senior Assistant and Superintendent, therefore, her promotion cannot be questioned at the belated stage.

6. The learned counsel for the third respondent has brought to the notice of this Court Rule 33 (b) of the A.P. State and Subordinate Service Rules, 1962, which reads as follows:

33. Seniority:

a. xxx

b. The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it;

Provided further that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed inter-se with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary, shall be assigned to the persons concerned, with reference to the order of merit or order of preference assigned to them in the said list.

xxx

and submitted that the said Rule is similar to Rule 24 (b) of Sri Padmavathi Mahila Visvavidyalam General and Subordinate Service Rules, 1986 (for short "the Rules") and relied on a decision of the Supreme Court in P. Srinivas v. M.Radhakrishna Murthy wherein the Supreme Court while considering the scope of Rule 33 (b) of the A.P.State and Subordinate Service Rules, 1962, held that as the appellant was placed higher in the seniority list than the first respondent in terms of the inter se merit ranking assigned by the service commission, the tribunal was right in its view that the appellant has to be treated as senior to the first respondent in view of the fixing of the order of preference among the candidates appointed simultaneously. The learned counsel submitted that the above decision of the Hon'ble Supreme Court is squarely applicable to the facts of the present case and as the seniority of the candidates appointed through the proceedings dated 18-10-1985 was as per Rule 24 (b) of the Rules, the petitioner is not entitled to go on saying that she is senior to respondents 2 and 3 and she is entitled to be placed above them in seniority. The writ petition is therefore liable to be dismissed.

7. In the light of the contentions of the respective parties, the point for consideration is:

Whether the petitioner is entitled to be considered as a senior to respondents 2 and 3 and whether she is entitled to be declared as such?

Point:

8. The petitioner is not denying the fact that the second respondent was appointed five months earlier to the date of her appointment in the non-existing vacancies in the year 1983, but she is contending that since their services were terminated through the proceedings dated 17-10-1985, the said period has to be ignored and the period from the regular employment through the proceedings dated 18-10-1985 only has to be taken into consideration for the purpose of computing the seniority. The petitioner in her earliest representation dated 19-3-1988 mentioned that as per her original date of joining i.e., on 25-11-1983 in the cadre of Assistant on consolidated pay, her seniority has to be fixed after the second respondent, but in the regularization orders dated 18-10-1985 it was clearly mentioned that the seniority of the Junior Assistants has to be fixed as per the roster system. If the roster system is taken into consideration, her seniority has to be fixed under S.No.3 in place of the third respondent, since both of them belong to O.C. category and she is having higher qualification than the third respondent, though both of them reported to duty on the same day. The petitioner further mentioned therein that in the age also she is senior to the third respondent, therefore, requested the concerned authorities to fix her seniority in appropriate place as per rules.

9. The petitioner remained silent in the above representation about the seniority of the second respondent.

10. According to the proceedings dated 18-10-1985, the respondents 2 and 3 are above the petitioner in the list of candidates and it was specifically mentioned in the said proceedings that the seniority of the candidates were arranged as per roster and will be as per the order in the proceedings. The petitioner did not challenge this order and for the first time she gave the representation on 19-3-1988, but in the said representation also she did not attribute any mala fide intention to the Registrar of the University at the time of issuing the proceedings.

11. In another representation dated 7-8-1993, in response to the seniority list circulated to her, the petitioner repeated the same contentions raised in the representation dated 19-3-1988.

12. In the representation dated 12-11-1993, which was given in response to the provisional seniority list circulated to her in the cadre of Junior Assistants, the petitioner mentioned that she requested the concerned authorities to fix her seniority as per rules, but it was not done right from the cadre of Junior Assistant. In spite of repeated requisitions and representations, no action was taken in fixing her seniority. Though the appointment orders were said to be issued as per the arrangement of the roster system for fixing the seniority of the candidates, the date of joining on their first appointment should be taken into consideration, as such the second respondent should not be placed under S.No.1 in view of her joining to duty on 24-10-1985 i.e., six days after the petitioner joining to duty. The petitioner further contended in the said representation that in fixing up the seniority, the date of joining, the age and the educational qualification should be taken into consideration and the candidates covered by S.Nos.2 to 4 are also junior to her, since they are all younger in age to her with lesser educational qualifications.

13. Subsequently, by taking into consideration the original seniority, the first respondent promoted the second respondent as a Superintendent through the proceedings dated 4-11-1993.

14. The petitioner is mainly relying on the following factors in claiming her seniority for promotion – 1) she joined duty earlier to respondents 2 and 3, 2) she is older to respondents 2 and 3, 3) she is having better educational qualification, 4) her probation was declared earlier to that of the second respondent, and 5) her regularization was also done earlier to the regularization of the second respondent. Before dealing with the question as regards seniority between the respective parties, it would be appropriate to refer to Rule 24, more particularly Rule 24 (b), of Sri Padmavathi Visvavidyalayam General and Subordinate Service Rules,

which deal with “seniority” among the teaching and non-teaching staff of the first respondent University and the same read as follows:

24. Seniority:

c. xxx

d. The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it.

e. xxx

f. xxx

15. On a bare reading of Rule 24 (b), it is crystal clear that the seniority will be determined as per the order of preference among the candidates appointed through the same proceedings. The rule do not indicate whether any preference has to be given for candidates who have reported to duty earlier to the other candidates who were appointed in the same proceedings, whether the age should be taken into consideration in fixing the seniority, whether any preference has to be given for better educational qualifications. The suitability or otherwise of the candidates will be considered at the time of making the appointment and their names will be arranged serially in the order of merit and that order will be taken into consideration for the purpose of seniority and not the date of the candidate reporting to duty. There are circumstances where the people, who are older in age than other candidates, will be kept above the youngsters at the time of finalisation of the selection of the candidates, but not as a matter of right. At the time of selection, the Committee will take into consideration the educational qualifications also, but would be very particular about the minimum required qualification to get eligibility to the said post and if a candidate has better qualifications, that is also likely to be taken into consideration by the Selection Committee.

16. Regarding the declaration of probation, it will be considered by the

appointing authority whether the candidate is an approved probationer or not as on the date of considering the name of the candidate for promotion, but the date of declaration or probation, either earlier or later, would not be the criteria for the purpose of considering any candidate for promotion. The date of regularization also assumes little importance, since the seniority of the candidates is being considered from the date of regular appointment irrespective of the regularization of the services of the candidate on a particular date. Rule 24(b) of the Rules specifically states that at the time of appointing two or more persons simultaneously to a service, the appointing authority may fix, either for the purpose of satisfying the rule of reservation of appointments or for any other reason, the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it, therefore, viewed from any angle, the petitioner cannot claim seniority over respondents 2 and 3 on the basis of earlier reporting to duty, age and higher educational qualifications. The seniority among the petitioner and respondents 2 and 3 was fixed in the appointment order dated 18-10-1985 and that seniority alone has to be taken into consideration for the purpose of further promotions among the parties. The first respondent University has not committed any error or violated any provisions of the rules while promoting respondents 2 and 3.

17. Rule 25 of the Rules deal with “promotions” to the employees of the first respondent University and the same read as follows:

25. **a) Promotion:**

No member of a service or class of a service shall be eligible for promotion from the category in which he was appointed to the service to the next higher category unless he has satisfactorily completed his probation in that category.

b)

i) Promotion to selection category or grade:

Promotions in a service or class to a selection category or to a selection

grade shall be made on grounds of merit and ability, seniority being considered only where merit and eligibility are approximately equal.

ii) Promotion according to seniority:

All other promotions shall be made in accordance with the seniority if the work and conduct of the incumbent are satisfactory unless

i. the promotion of a member has been withheld as a penalty, or

ii. a member is given special promotion for conspicuous merit and ability.

c) **Probation on promotion**: xxx

d) **Duty in different service counting for probation on promotion**: xxx

18. Since it has been categorically stated in Rule 25 (ii) of the Rules also that all promotions, other than promotions to selection category or grade, shall be made in accordance with the seniority, the first respondent University has given promotions to respondents 2 and 3 in accordance with their seniority.

19. Though, in the writ affidavit, the petitioner attributed mala fides to the Registrar of the first respondent University, she could not explain as to what were the circumstances under which she is made to come to such an opinion that the Registrar acted with a mala fide intention at the time of issuing the proceedings to benefit respondents 2 and 3 and to deny the seniority to the petitioner. Even if we ignore the service of the petitioner and respondents 2 and 3 in the non-existing vacancies and even if we take into consideration the proceedings dated 18-10-1985, the respondents are kept much above the petitioner in the list of candidates appointed through the said proceedings. The unabated claim of the petitioner holds no water and she cannot be treated as a senior to respondents 2 and 3. Whenever the petitioner comes forward with a plea that she is entitled to be considered as a senior on the basis of her earlier reporting to duty, her educational qualifications and age, she has to base on the relevant rules and the circular instructions, if any, to establish a right to be considered as a senior on the basis of those considerations

and if she fails to establish a right of seniority on any of those considerations, her repeated plea for recognizing her seniority would be ignored, and she remains without any remedy, more particularly a remedy through an extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

20. The learned counsel for the third respondent raised the plea of limitation on the ground that the petitioner kept quite for a considerable period without questioning the proceedings dated 18-10-1985.

21. The petitioner did not prefer any appeal against the order of the first respondent dated 26-10-1993, as provided under Section 34 of Sri Padmavathi Mahila Visvavidyalayam Act, within a period of three months from the date of receipt of the order. The petitioner having received the proceedings dated 18-10-1985 and reported to duty, remained silent for a period of three years till she made her first representation on 19-3-1988 and after receipt of the adverse orders also, she did not challenge those orders immediately, therefore, the writ petition cannot be maintained on the ground of limitation also.

22. The learned counsel for the petitioner submitted that since no orders have been passed by the first respondent on her repeated representations, it would be appropriate if the first respondent is directed to reconsider the matter and to fix the seniority of the petitioner afresh by taking into consideration the factors highlighted by her, but, since the proceedings indicate that the first respondent expressed its view for more than once that the petitioner is not entitled to get seniority over respondents 2 and 3, and in view of putting a quietus to the litigation, I do not find any necessity of directing the first respondent to once again consider the matter in fixing the seniority of the petitioner.

23. In the light of the totality of the circumstances mentioned above, I do not find any merit in the writ petition. The writ petition is accordingly dismissed by holding that the petitioner is not entitled to claim seniority over respondents 2 and 3.

Contempt Case No.749 of 1999

24. The petitioner filed the contempt case contending that the first respondent committed the contempt of the Court by failing to implement the order of this Court dated 22-11-1994 passed in an application vide W.P.M.P.No.23719 of 1994 which was filed along with the writ petition. In the said order the first respondent was directed to consider the petitioner for the post of Superintendent in the existing leave vacancy without insisting for the disposal of the main writ petition, pending further orders on the petition.

25. The record discloses that in pursuance of the order of this Court dated 22-11-1994 and the order of this Court dated 17-12-1999 in the contempt case, the petitioner was temporarily promoted as a Superintendent along with the third respondent and another person through the proceedings dated 12-1-2000 in the leave vacancies and subsequently through the proceedings dated 21-2-2000 the petitioner, third respondent and another person were reverted as Senior Assistants on account of joining of the Officer who went on leave. In view of the orders in the main writ petition holding that the petitioner is not entitled to be considered as a senior to respondents 2 and 3, the contempt proceedings are closed by dropping further action in the matter.

26. In the result, W.P.No.19073 of 1993 is dismissed. C.C.No.749 of 1999 is closed. No order as to costs.

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(Dr.G.Yethirajulu, J)

25th August 2004

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Registrar, Sri Padmavati Mahila Viswa Vidyalayam, Tirupati, Chittoor District.
2. Smt. N.R. Vasanta Kumari, W/o.N.Danial, Superintendent, Sri Padmavathi Mahila Viswa Vidyalayam, Tirupathi, Chittoor District.
3. Smt. B. Bhagya Lakshmi, Superintendent, Sri Padmavathi Mahila Viswa Vidyalayam, Tirupati, Chittoor District.
4. 2CD copies
5. Prof. Noble Das, Registrar, Sri Padmavati Mahila Viswa Vidyalayam, Tirupati, chittoor District.